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SUBJECT: INTERNATIONAL MEDIATION CONFERENCE HELD IN JIANGSU

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¶1. (SBU) Summary: On the margins of an April 14-18 American Bar Association(ABA)-sponsored administrative law conference in Suzhou, Jiangsu Province, Supreme People's Court (SPC) Administrative Court Chief Judge Zhao Daguang told FSN Rule of Law Coordinator (ROLC) that the SPC soon would issue a judicial interpretation that would authorize the use of mediation in resolving administrative litigation cases. Mediation in administrative law cases is currently a widely used but not specifically authorized practice in China. Mediation is authorized for civil cases or for civil compensation in criminal cases. Most judges and legal academics at the conference supported this move, as it would provide judges with more flexibility to resolve difficult administrative cases, especially those involving mass disputes such as housing demolition or relocation cases. Local governmental representatives, however, were less supportive of using mediation and worried that it would impinge on the discretionary power that agencies had in these cases. They urged that the SPC not issue a judicial interpretation, but rather go through the National People's Congress (NPC) to amend the law. According to Zhao, the SPC would go ahead and prepare a draft to the Administrative Litigation Law and was considering circulating the draft to the U.S. experts for comments. End Summary.

Jiangsu High Court Administrative Law Project

¶2. (U) On April 14-15, FSN Rule of Law Coordinator (ROLC) attended the International Forum on Mediation in Administrative Litigation jointly held by Jiangsu High Court, Suzhou University Law School and American Bar Association (ABA) in Suzhou. (Note: ROLC had in fact helped facilitate the conference by letting the ABA's Beijing Representative know of the Jiangsu High Court's desire to host such a conference. End note.) There were about

40 Chinese national and international attendees at the conference. Chinese attendees included judges from the Supreme People's Court (SPC), provincial high courts and municipal intermediate courts, academics, and government officials. International attendees included the United States Court of Federal Claims Judge Eric Bruggink, University of Missouri-Columbia Professor Philip Harter, and London-based Public Law Project Senior Researcher Varda Bondy.

13. (SBU) The conference's focus was the Jiangsu High Court's administrative law reform project. The project examined whether mediation should be authorized as a method to resolve property disputes. The SPC had tasked the project to the Jiangsu High Court in 2006. The project was one of 13 legal reform projects supported by the Supreme Court and the only project related to administrative litigation. In conversations with ROLC in 2006 and Spring 2007, Jiangsu Province High Court Administrative Court Chief Judge Zhou Rongmeng said that the project focused on gathering information in four areas: 1) the influence that mediation had on citizens' rights; 2) its effect on the system of evidence; 3) its effect on the court's judicial authority; and 4) its influence on trial procedures. The project was carried out by three work teams. One team conducted academic research, a second team carried out investigations, and the third team drafted a report that had been submitted to the SPC. The Jiangsu High Court released its project report and suggestions on using mediation in administrative litigation at the April conference.

14. (SBU) Zhou said that 80 to 90 percent of administrative cases in Jiangsu were related to property disputes, such as housing demolition and relocation cases. According to Zhou, judges had become increasingly frustrated with these cases because they felt that they did not have enough flexibility in providing rulings. In addition, under current law, judges could

SHANGHAI 00000279 002 OF 003

only make a decision on whether the local government's conduct was lawful or not and could not decide on the level of compensation for cases. Judges also felt that the level prescribed by law for compensation was too low, especially in the prosperous Jiangsu province. Finally, judges were not able to enforce their rulings since governmental agencies had the ability to ignore decisions that were not in their favor.

15. (SBU) To increase the level of compensation and to encourage government agencies to cooperate with rulings, many judges had started using mediation to settle cases. Judge Zhou said that mediation provided government agencies with a way to save face and, thus, be more willing to provide compensation. According to Judge Zhou, one third of all administrative cases in China were now settled through mediation. Courts usually conducted mediation after they tried a case but before they rendered a verdict. If mediation was successful, a court dismissed the case on the basis that either the plaintiff agreed the case was without merit or because the defendant agreed to modify his behavior without the entry of formal judgment.

16. (SBU) Zhou said the problem now was that it was technically illegal to use mediation to settle administrative cases. He added that the SPC was examining the issue and interested in preparing a judicial interpretation specifically authorizing the use of mediation in administrative cases and prescribing when and how mediation should be used. To help it prepare the judicial interpretation, the SPC tasked the Jiangsu High Court with implementing a project to collect data on mediation. On the margins of the conference, SPC Administrative Court Chief Judge Zhao Daguang told ROLC that the SPC would use this report as the basis of a judicial interpretation on mediation, which would be published this year. The SPC was now in the process of consulting with the National People's Congress (NPC) and State Council on this issue.

17. (SBU) The conference was originally scheduled for March 2007, but organizers delayed the conference because it conflicted with a SPC conference on administrative litigation.

At the SPC conference, which took place on March 29, SPC President Xiao Yang reportedly had acknowledged that China's administrative courts needed to reform. He said that China's administrative courts experienced a range of problems, including outside interference in court decisions. He called for a broad range of reforms to address these problems, such as allowing jurisdiction over a particular case to be shifted from a tribunal in one locale to another. Xiao also specifically noted the need to adopt new mechanisms to better handle and "coordinate" action on administrative litigation disputes, particularly those involving "mass administrative disputes" such as land seizures. He also called on the SPC to promptly issue a judicial interpretation on the use of mediation in administrative litigation proceedings.

Government Agencies Disagree

¶8. (SBU) Although most of the judges and professors at the ABA-sponsored conference supported using mediation in administrative litigation, local government officials said they had serious concerns about the procedure. Jiangsu Provincial People's Government Legal Affairs Office Vice Director Gao Jianxin said that according to the law, governmental agencies had discretionary power in some aspects of administrative cases. In those aspects, the courts should not force agencies to undergo mediation. While he did not mention an example, one argument made by government representatives was that many government agencies could levy fines on citizens for breaking certain rules. The amounts for these fines were pre-determined by law and, according to Gao, courts had no right to change these amounts. He also worried that government officials would be under pressure to agree to mediation to resolve cases. He

SHANGHAI 00000279 003 OF 003

also disagreed with SPC's plan to issue a judicial interpretation to legalize the use of mediation and said that this issue should be taken up by the NPC which could then amend the law.

Jiangsu High Court Report: Mediation Must Be Transparent And Just

¶9. (SBU) The Jiangsu High Court's report stressed the right of citizens to accept or reject mediation. According to Judge Zhou, the court should review whether the decision to accept mediation by the plaintiff (common citizen) was made by himself willingly without any coercion or threats from the defendant (government). If there was evidence of coercion, the court should not hold mediation. The report also emphasized that mediation should be transparent and just. There should be no private mediation and all procedures should be held in the courtroom. Many of the judges that attended the conference also stressed the importance of due process in administrative litigation.

U.S. Experts Wanted

¶10. (SBU) According to SPC Judge Zhao, the SPC still planned to change the law through issuing a judicial interpretation, but was also going to draft an amendment to the administrative litigation law. He added that the SPC was considering sending this draft to U.S. legal experts for comment and asked Beijing Legal Advisor, ROLC and ABA's representative for assistance in identifying these experts. Zhao said after getting comments from experts, SPC would like to visit the United States and hold face-to-face discussions. He indicated that SPC already had funding for this trip. He said that after 19 years, the administrative litigation law should be amended and the SPC would play an active role in this process.

Comment: A Breakthrough in Resolving Mass Dispute Cases?

¶11. (SBU) The conference was an important step in the SPC's and Jiangsu High Court's efforts to reform the administrative law. It is unusual for Chinese officials to openly disagree at public forums in front of foreign experts. Their comments highlight the disagreements within the government and legal community over reform issues. However, if mediation is allowed to be used as a means to resolve legal disputes, it could provide a much needed safety valve for dealing with housing demolition, relocation and other politically sensitive mass dispute cases.

¶12. (SBU) This message was coordinated with Embassy Beijing.
JARRETT